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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

PATRICK CALHOUN, et al., on behalf of
themselves and all others similarly situated,,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

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*Counsel for Defendant; additional counsel
listed in signature blocks below*

Case No. 4:20-cv-5146-YGR-SVK

**STIPULATION AND ~~[PROPOSED]~~
ORDER RE LIMITED REMAND**

1 Plaintiffs and Defendant Google LLC (together, the “Parties”), by and through undersigned
2 counsel, respectfully submit this Stipulation and Proposed Order Regarding Scope of Order of
3 Summary Judgment.

4 WHEREAS, on December 12, 2022, the District Court granted Google’s Motion for
5 Summary Judgment based on the Court’s finding that Plaintiffs consented to the conduct at issue
6 (the “Order,” District Dkt. No. 935);

7 WHEREAS, on December 12, 2022, the Court entered Judgment dismissing the case
8 (District Dkt. No. 937);

9 WHEREAS, on December 20, 2022, Plaintiffs filed a Notice of Appeal;

10 WHEREAS, Google sought limited remand from the Ninth Circuit to clarify the scope of
11 the Order, specifically, whether Court’s determination that Plaintiffs’ claims are barred by their
12 consent to the conduct at issue also applies to Counts 1, 6, 10, 12, 15 and 16 (the “Dormant Claims”);

13 WHEREAS, on March 31, 2023, the Ninth Circuit granted Google’s motion for limited
14 remand with respect to the scope of the Order;

15 WHEREAS, via email on April 4, 10, 11 and 12, the Parties met and conferred and reached
16 certain agreements intended to promote efficiency and conserve judicial resources;

17 NOW, THEREFORE, the Parties stipulate as follows:

18 1. Consent is either a required element of or a defense to Counts 1, 6, 10, and 12.

19 Accordingly, these claims are dismissed as a result of the Court’s finding that Plaintiffs
20 consented to the conduct on which the claims are based.

21 2. Plaintiffs do not dispute that Counts 15 (punitive damages) and 16 (declaratory
22 judgment) require a surviving cause of action, and, therefore, are dismissed as well.

23 3. Accordingly, the Court’s Order applies to and dismisses all claims, including the
24 Dormant Claims.

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4. If the Court deems it necessary, the Parties agree to append the following language to line 11 of page 27 of the Order:

“Following limited remand from the Ninth Circuit, the Court clarifies that this Order applies to all claims asserted in Plaintiffs’ First Amended Complaint, including the six “Dormant Claims.” . Counts 1 (the federal Wiretap Act), 2 (Invasion of Privacy), 10 (Unjust Enrichment), and 12 (the California Computer Data Access and Fraud Act) are dismissed, following Plaintiffs’ stipulation. Counts 15 (punitive damages) and 16 (declaratory judgment) are terminated because Plaintiffs may not recover punitive damages or obtain injunctive relief in the absence of any other live cause of action.”

Plaintiffs reserve all rights to appeal the Court’s ruling.

DATED: April 12, 2023

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Counsel for Plaintiffs

Counsel for Defendant

1 **[~~PROPOSED~~] ORDER**

2 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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4 Date: May 16, 2023

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6 HON. YVONNE GONZALEZ ROGERS

7 United States District Court Judge
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)(3)

I, Andrew H. Schapiro, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of April, 2023, at Chicago, Illinois.

/s/ Andrew H. Schapiro

Andrew H. Schapiro